



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/05/03	Bill No:	AB 992
Tax:	Munitions	Author:	Ridley-Thomas, et al
Board Position:		Related Bills:	AB 602 (Koretz)

BILL SUMMARY

This bill would impose a fee upon retailers at the rate of 10 cents for each munition, as defined, sold at retail in this state on or after January 1, 2004.

Summary of Amendments

Since the previous analysis, amendments to this bill change the name of the fund from the Firearms Related Emergency Services Reimbursement Fund to the Firearm Victims' Reimbursement Fund and change the responsibility for managing claims to the fund from the Emergency Medical Services Authority to the California Victims Compensation and Government Claims Board.

ANALYSIS

Current Law

Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state, including munitions. Currently, the total combined sales and use tax rate is between 7 ¼ percent to 8 ½ percent, depending on the location in which the merchandise is sold. The Board does not collect any additional taxes or fees on the sale or use of munitions.

Proposed Law

This bill would add Chapter 2.8, commencing with Section 12330, to Title 2 of Part 4 of the Penal Code to impose a fee at a rate of 10 cents per munition on all munitions sold at retail in this state on or after January 1, 2004.

This bill would define "munition" to mean either a finished munition product consisting of a projectile with its fuse, propelling charge, or primer, or a primer component. "Munition" does not include a BB or a pellet commonly used in an air rifle or pistol.

This bill would exempt any munition purchased by any peace officer required to carry a firearm while on duty, or by any governmental law enforcement agency employing that officer, for use in the normal course of employment.

All amounts required to be paid would be paid to the Board in the form of remittances that are payable to the Board and are separate from the remittance of any other tax. The Board would be required to transmit those amounts to the Treasurer to be deposited in the State Treasury to the credit of the Firearm Victims' Reimbursement Fund, which this bill would create. The Firearm Victims' Reimbursement Fund would be continuously appropriated, without regard to fiscal years, as follows:

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- To the Board for its cost of implementation and administration of the fee, and to pay refunds. The amount appropriated to the Board to cover the costs of implementation and administration may not exceed 5 percent of the total revenue deposited in the fund in the same fiscal year.
- To pay claims as administered by the California Victims Compensation and Government Claims Board in a similar manner and for similar purposes as the board administers the Restitution Fund, except that it shall not be limited to victims of crime. The fund shall compensate persons who are injured by firearms and who suffer an uncompensated financial loss.

This bill would provide that if the amount credited to the Firearm Victims' Reimbursement Fund exceeds the amount necessary to pay claims for uncompensated costs of firearm injuries, the Board shall temporarily adjust for the following one year period, the fee to be charged on the retail sale of munitions to an amount estimated to deplete any surplus in the fund during the next calendar year.

This bill would also provide that the fee to be charged on the retail sale of munitions shall be increased by one cent every two years, commencing January 1, 2006, unless the increase in the fee would exceed the funds necessary to pay claims for uncompensated costs of firearm injuries.

Background

In 1993, two bills (AB 856, Tucker and SB 1129, Roberti) were introduced which would have imposed an additional sales tax on both firearms and ammunition. Both failed to advance out of their house of origin.

In 1994, SB 42X (Hughes) would have imposed a 10 percent sales tax on ammunition, while AB 24X (Eastin) and AB 3076 (Bates) proposed an excise tax of 15 cents per round of ammunition. All three bills failed to advance out of their house of origin.

Senate Constitutional Amendment 12 (Perata), introduced during the 2002 Legislative Session, would have placed a constitutional amendment before voters to impose a tax upon retailers at the rate of 5 cents for each munition sold at retail in this state. SCA 12 failed passage in the Senate Revenue and Taxation Committee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to offset some of the costs associated with providing trauma care to those in need.
2. **Key amendments.** **May 5** amendments change the name of the fund from the Firearms Related Emergency Services Reimbursement Fund to the Firearm Victims' Reimbursement Fund and change the responsibility for managing claims to the fund from the Emergency Medical Services Authority to the California Victims Compensation and Government Claims Board. **April 22** amendments address concerns raised in the previous Board analysis, including the addition of a use tax provision, clarification on how the proposed fee would apply to the purchase of component parts of munitions, and clarification that the exemption that would be afforded to purchases of munitions by peace officers would only apply to purchases

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of munitions for use in the normal course of employment. Additional amendments limit reimbursement of Board costs to five percent of the revenue generated, change the name of the fund to which the revenue would be transferred and provide that the Board may temporarily adjust the rate if certain conditions are met.

3. **Cost cap could be problematic.** This bill would create a new fee program to be administered by the Board. The provisions in this bill provide that the Board would be reimbursed for the costs of implementation and administration through the revenues generated by the fee. However, the reimbursement to the Board would be limited to an amount not to exceed 5 percent of the total amount of revenue deposited in the fund in the same fiscal year. Based on the current revenue estimate of \$72.8 million annually, the Board would be reimbursed for costs up to \$3.6 million annually. Since the implementation and administration costs have not been estimated by the Board, it is not known if the cost cap would provide the Board with sufficient funding to administer the fee.
4. **Munitions fee would be subject to sales and use tax.** Although not specified in this bill, it is assumed that the proposed fee would be imposed upon the retailer, rather than the consumer (see comment # 10). Sales and use tax is due based on the gross receipts or sales price of tangible personal property in this state. The proposed munitions fee would not be specifically excluded from gross receipts or sales price, so it would be included in the amount on which sales or use tax is computed.
5. **Use tax provisions.** This bill would impose a fee on the retail sale of munitions in this state. This bill also contains a corresponding fee for the retail sale of munitions outside this state, but purchased for the storage or use in this state.

Federal court rulings have limited the Board's authority to be able to force out-of-state retailers to register with the Board and collect the use tax on behalf of California customers. This bill would impose a fee, rather than a tax. It is unclear whether federal court rulings would limit the Board's authority to enforce collection of the proposed fee from out-of-state retailers.

6. **Board would be required to adjust the fee.** This bill provides that the proposed fee would be \$0.10 per munition and that beginning on January 1, 2006, the proposed fee would be increased by one cent every two years. This bill also provides that if amounts credited to the Firearm Victims' Reimbursement Fund (Fund) exceed the amount necessary to pay claims for which the Fund is established, the Board shall temporarily adjust, for the following one year period, the fee to be charged on the retail sale of munitions so that any surplus in the Fund would be depleted during the next calendar year. This bill does not indicate on what date the Board must make this determination, but it does provide that the Board shall adopt regulations necessary to implement the provisions in this bill.
7. **Exemption.** This bill would allow an exemption from the fee for any munition purchased by a peace officer required to carry a firearm while on duty, or by any governmental law enforcement agency employing that officer, provided the munition is purchased for use in the normal course of employment.

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8. **Bill could set a precedent.** Imposing varying fees on specific commodities complicates tax administration and could set a precedent for establishing multiple fees on other classes of tangible personal property. This results in increasing administrative costs to the Board and an increased record-keeping burden on fee payers.
9. **This bill could complicate retailers records and reporting.** Munition retailers already must collect and remit sales and use tax on the retail sale of munitions in California. Munition retailers most likely sell other tangible personal property subject to sales and use tax. Adding an additional fee that would be due on the sale of munitions would require retailers to keep track of munition sales separately from other sales of tangible personal property. Additionally, since the proposed fee is a fee of 10 cents per munition, rather than a percentage of gross receipts like the sales tax, reporting errors by munition retailers are likely to occur.
10. **Suggested technical amendment.** As currently written, this bill would impose a fee upon all munitions sold at retail. With this language, it is unclear who would be liable for the payment of the fee (retailer or consumer). Based on other language in the bill, it is assumed that the proposed fee would be imposed upon the retailer, except in situations where the munition is purchased from a point outside this state, in which case the proposed fee would be imposed upon the consumer. It is recommended that this section be amended to read as follows:

12330. (a)(1) There shall be imposed a fee upon the retailer of all munitions sold ~~at retail~~ at the rate of 10 cents (\$0.10) for each munition sold at retail in this state on or after January 1, 2004.

11. **Administrative provisions.** In order for the Board to administer the proposed fee under provisions consistent with other Board-administered fees, it is suggested that subdivision (b) of proposed Section 12330 be amended to provide the following:

For purposes of this chapter, the board may collect the fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

It is also suggested that the bill be amended to specify a due date for the fee and return and to authorize the payment of refunds on overpayments of the fee. Board staff is willing to work with the author's office in drafting appropriate amendments.

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12. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed on or after January 1, 2004, which is in the middle of the state's fiscal year. Although this bill provides that the Board would be reimbursed for administration of the proposed fee from the fee revenues, in order to begin to develop the fee payer base, reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not be identified in the Board's 2003-04 budget.
13. **Related Legislation.** Assembly Bill 602 (Koretz) contains provisions similar to this bill.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include identifying and registering fee payers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. This bill does, however, limit the Board's cost reimbursement to 5% of the amounts deposited into the Firearm Injuries Medical Services Reimbursement Fund. A cost estimate of this workload is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

This bill would place a \$0.10 per munition fee on each munition or primer component sold at retail in this state. The sale of munitions to law enforcement is exempt from the proposed fee. According to industry representatives, munitions sold in the state of California fall into three general subcategories: 22 caliber rounds, pistol and rifle rounds, and shotgun rounds. Each subcategory constitutes a 50 percent, 25 percent, and 25 percent market share respectively. The estimated costs associated with those subcategories are \$1.00, \$10.50, and \$12.50 per 50 rounds respectively. The weighted average cost per 50 munitions is \$6.25 $[(.5 \times \$1.00) + (.25 \times \$10.50) + (.25 \times \$12.50)]$.

According to the National Sporting Goods Association, in 2000 the total expenditure on munitions in the US was \$806.5 million. Since California comprises 12 percent of the US population, the expenditures on munitions in the state are estimated to be \$96.8 million. The weighted average cost of 50 rounds was estimated to be \$6.25. Therefore, the total number of munitions purchased in the state is estimated to be 774.4 million $[(\$96.8 \text{ million} / \$6.25) \times 50]$.

Law enforcement agencies in the state use munitions in varying amounts. A survey of some of those agencies determined that the estimated average expenditure by law enforcement amounted to \$9.7 million. Law enforcement agencies do not use 22 caliber rounds. The estimated cost per 50 rounds to law enforcement agencies was \$10.50 because the majority of the rounds purchased were handgun rounds. The estimated total munitions purchased by law enforcement was 46.2 million $[(\$9.7 \text{ million} / \$10.50) \times 50]$.

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The total number of munitions that qualify under this bill is estimated to be 728.2 million (774.4 million munitions – 46.2 million munitions).

Revenue Summary

The revenue generated by imposing a \$0.10 fee per munition is estimated to be:

	<u>Munitions</u>	<u>Revenue</u>
Fee (\$0.10)	728.2 million	<u>\$72.8 million</u>

The revenue gain from an additional \$72.8 million subject to the sales and use tax is estimated to be:

	<u>Revenue</u>
State Gain (5.00%)	\$ 3.6 million
Local Gain (2.25%)	\$ 1.6 million
Special District Gain (0.67%)	<u>\$.5 million</u>
Total Gain	<u>\$ 5.7 million</u>

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